

REMARKS

This application has been reviewed in light of the Office Action dated June 11, 2007. Claims 1-6 and 8-11, 13, and 15-31 are presented for examination. Claims 12 and 14 have been canceled, without prejudice or disclaimer of subject matter. Claims 1, 3-6, 8-11, 13, 16, 17, 19-25, and 27-31 have been amended to define more clearly what Applicants regard as their invention. Claims 1, 17, and 25 are in independent form. Favorable reconsideration is requested.

The drawings were objected to under 37 CFR § 1.83(a). Applicants submit herewith a replacement sheet which contains FIGS. 1-3. The crosshatching in FIGS. 2 and 3 has been changed to reflect the crosshatching format for a “Section of Synthetic Resin or Plastic” in compliance with MPEP § 6.02 IX, as required by the Examiner. In addition, reference number 16 has been moved in FIG. 3 for clarity. Accordingly, withdrawal of the objection is respectfully requested.

The rejection of Claim 14 under 35 U.S.C § 112 first paragraph, has been rendered moot by the cancellation of that claim.

Claims 23 and 31 were rejected under 35 U.S.C § 112, second paragraph, as being indefinite due to insufficient antecedent basis for the limitation “said wavelength.” Claims 23 and 31 have each been amended to ensure sufficient antecedent basis for this term. Claim 31 was also rejected due to insufficient antecedent basis for the limitations “said sidewall” and “said outer circumference.” Claim 31 has been amended to depend from claim 25, which provides antecedent basis for these limitations. Favorable reconsideration is requested.

Claims 1, 3-6, 9-17, 19-22, 24, 25, and 27-30 were rejected under 35 U.S.C §103(a) as being unpatentable over Patent Cooperation Treaty Publication No. WO 96/01212 (“Tabaroni”). Claims 2, 8, 18, 23, and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tabaroni in view of U.S. Patent No. 5,988,417 (“Cheng”).

Independent claim 1, as amended, is directed to a plastic container comprising a finish portion and a generally cylindrical main body portion. The main body portion comprises a sidewall having a plurality of generally vertical ribs defined therein. The sidewall further has a plurality of generally horizontal wave shaped ribs defined therein. At least one of the generally horizontal wave shaped ribs has an amplitude that is within a range of about 4.5 percent to about

30 percent of its wavelength. At least one of the generally vertical ribs intersects with more than one of the generally horizontal wave shaped ribs.

Tabaroni describes a disposable container with vertical grooves 26 and transverse grooves 21 that include a central stretch 22 that is substantially horizontal. (Tabaroni at page 9, paragraph 2). Each vertical groove 26 of Tabaroni intersects with only one transverse groove 21. Thus, Tabaroni does not teach or suggest that at least one of the vertical ribs intersects with more than one of the horizontal ribs, as recited in Claim 1.

The Office Action states that Tabaroni discloses “a plurality of vertical ribs 2 and 26 intersecting the horizontal ribs.” (Office Action, page 5). The Office Action appears to rely on the “peripheral weld 2”, as shown in FIG. 11 of Tabaroni, as an example of a vertical rib defined in the sidewall. However, the peripheral weld 2 disclosed in Tabaroni is a continuous weld formed on the edges of two separate halves of a container, rather than a vertical rib defined in a sidewall, as recited in Claim 1.

“During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’” M.P.E.P. § 2111 (emphasis added). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.” M.P.E.P. § 2111 (citing *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)).

As noted above, the Office Action appears to interpret the claim phrase “said main body portion comprising a sidewall having a plurality of generally vertical ribs defined therein” such that it would cover a continuous weld formed on the edges of two separate halves of a container, as disclosed in Tabaroni. It is respectfully submitted that this interpretation is too broad to be consistent with the specification, because the specification describes the plurality of vertical ribs as elements that are defined in the sidewall, rather than on the edges of two separate halves of a container.

Moreover, Applicants respectfully submit that the interpretation put forth in the Office Action is inconsistent with the interpretation that one skilled in the art would reach, because the peripheral weld 2 would not be regarded as a vertical rib defined in a sidewall, such as, for example, a vertical rib defined to increase the hoop strength of the sidewall. Rather, one skilled in the art would regard the peripheral weld 2 as a seam that is used to join together two parts of a container, and this is how it is defined in Tabaroni – as a “peripheral weld” which “joins together

the halves 3 constituting the body of the container.” (Tabaroni, page 7). The distinction between a vertical rib defined in a sidewall and a peripheral weld is further clarified when Tabaroni states that:

The weld 2 extends continuously around the container 1 and its top stretch 14 is formed after the rest of the weld 2, in particular after the product to be poured has been placed in the container 1. On use, the top stretch 14 is removed, for example by cutting or tearing, from the weld 2.

(Tabaroni, page 8).

For at least the above reasons, claims 1 is believed to be patentable over Tabaroni. Claims 17 and 25 similarly recite the features discussed above with respect to claim 1 and accordingly, these claims are also believed to be allowable over Tabaroni.

Furthermore, for the reasons discussed below, it is believed that *prima facie* obviousness has not been established with respect to claim 1.

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” M.P.E.P. § 2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

The Office Action asserts that Tabaroni teaches or suggests a wave with an amplitude that “is considered to be within the range of 4.5-30 percent of the wavelength.” (Office Action at page 5). However, Tabaroni is silent as to the amplitude and wavelength of the transverse grooves, and these parameters cannot be readily determined from FIG. 7 or FIG. 8, which illustrate the horizontal grooves of Tabaroni, nor from any other portion of Tabaroni. The Office Action does not indicate what portion is being relied upon to support the assertion that Tabaroni discloses the claimed relationship between amplitude and wavelength. If the rejection based on Tabaroni is maintained, Applicants respectfully request that “the particular part relied on . . . be designated as nearly as practicable”, as required by 37 C.F.R. § 1.104(c) (See, M.P.E.P. § 706).

The Office Action further asserts that the claimed range would have been “a matter of design choice.” (Office Action at page 5). To the extent that the Examiner is relying on official notice or common knowledge in the art, Applicants respectfully traverse this assertion and request that the Examiner cite a specific reference in support of this position, in accordance with M.P.E.P. § 2144.03.

In the absence of a specific teaching or suggestion in the prior art of the claimed relationship between amplitude and wavelength, it is respectfully submitted that *prima facie* obviousness has not been established with respect to claim 1.

The Office Action states that “applicants do not appear to have shown any particular criticality for the range.” (Office Action at page 5). However, Applicants note that “the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” M.P.E.P. § 2142.

Further in this regard, according to M.P.E.P. § 2144.05 III, “[a]pplicants can rebut a *prima facie* case of obviousness based on overlapping ranges by showing the criticality of the claimed range.” However, the cited art does not teach or suggest an overlapping range, so a *prima facie* case of obviousness based on overlapping ranges has not been established. Therefore, as discussed above, there is no need for the Applicants to show the criticality of the claimed range.

Accordingly, for these additional reasons, claim 1 is believed to be patentable over Tabaroni.

A review of the other references cited above has failed to reveal anything which, in Applicants’ opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration or reconsideration, as the case may be, of the patentability of each on its own merits is respectfully requested.

In view of the above amendment, applicants believes the pending application is in condition for allowance.

Attorney Docket No. 2001365-00123

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment, to Deposit Account No. 08-0219

Respectfully submitted,

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